

Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements

The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person and arrangement in **Germany**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

Contents

Contents	1
I. Definitions and Company Formation Process	2
II. Types of Legal Entities.....	6
Private Limited Liability Company (GmbH).....	6
Public (limited) company (AG).....	7
General Partnership (OHG).....	9
III. How to Access Information.....	10
Registries	10
Registry update.....	11
Other Channels.....	14
IV. Other Useful Sources of Information.....	16

I. Definitions and Company Formation Process

1. What is the definition of legal ownership in Germany?

The German law does not provide a definition of legal ownership. However, legal ownership is interpreted as designating a person, either natural or legal, who legally owns the shares in a company in his/her own name and therefore has the right to dispose of these shares and is entitled to exercise the rights flowing from the shares (voting rights and profit sharing).

In the case of a private limited liability company (GmbH), the list of shareholders must be filed with the commercial registry. This list is publicly available through the commercial registry. The shareholders listed are deemed to be the owners of the shares and the legal owners of the said company.

2. What does “beneficial ownership” mean in Germany?

According to Section 1 paragraph 6 of the German Money Laundering Act the term beneficial ownership is defined as follows:

“For the purposes of this Act, "beneficial owner" means the natural person who ultimately owns or controls the contracting party, or the natural person on whose behalf a transaction is ultimately carried out or a business relationship is ultimately established. The term "beneficial owner" includes, in particular:

1. In the case of corporate entities that are not listed on an organised market as defined in section 2 (5) of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) and are not subject to transparency requirements with regard to voting rights consistent with Community laws, or are not subject to equivalent international standards, any natural person who directly or indirectly holds more than 25% of the capital stock or controls more than 25% of the voting rights;
2. In the case of foundations with legal capacity and legal arrangements used to manage or distribute assets or property on ‘*Treuhand*’, or through which third parties are instructed with the management or distribution of assets or property, or similar legal constructs:
 - a. any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;
 - b. any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;
 - c. where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed;
 - d. any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.
3. In the case of a party acting on behalf of another, the other person. Where contracting parties act as ‘*Treuhänder*’, they are deemed to be acting on behalf of another.”

3. How are legal entities (companies, partnerships, foundations, etc.) formed in Germany?

The process for the formation of legal entities differs from one form of legal entity to another. However, the formation of a private limited liability company (GmbH) can be seen as exemplary for the German legal system, which is characterised by the central role played by notaries public and the commercial register both providing complementary legality and verification checks:

- The notary public provides legal advice (*e.g.*, on legal forms and the possibilities and limits of designing the legal documents for formation of the company) and drafts according to the founder's demands the following documents: the articles of association, the application for registration with the commercial register and a list of shareholders.
- In a second step, all relevant documents are notarized, which encompasses the notary reading out loud the text of the documents, verifying its contents, resolving equivocality, giving advice on the concrete legal effects of clauses and answering the founder's questions. Moreover, the founders' and the future directors' identity is verified by the notary public using an identification documentation bearing a photograph according to the German Money Laundering Act. The notary also instructs the company's future directors on their duties and liabilities.
- Once signed, the notary public checks whether all documents required for the application for registration of the company are complete, in the right form and in the right manner. The notary public also verifies the proof that the required minimum share capital is paid up in the required way. Authentic electronic copies of the documents for company formation are generated, electronically sealed and securely transmitted together with machine-readable data to the commercial register.

The commercial registry cross-verifies the data and documents submitted for the formation of a company, which comes into existence upon its enrolment in the commercial register.

4. What is the role of Company Registries in Germany?

The role of the commercial registry is twofold:

- Before the registration of a company: the commercial registry checks that the preconditions for registration are met and conducts verification on the sealed documents and data transmitted by the public notary. A company limited by shares is granted legal personality only upon registration.
- The role of the commercial registry is also to obtain, maintain and record throughout their life-cycle information on existing companies, in particular, depending on the respective legal form, information about the (founding) members, the legal representatives of a company and their power of representation, its name and business purpose, location of the registered office, business address and its share capital. Registered data is deemed correct and is legally binding as against the company itself as well as against third parties (public trust).

5. How is basic information and beneficial ownership information on legal entities obtained and recorded in Germany?

Public notaries request, obtain and verify all legally required information and documents from their clients before submitting the application for registration of a company to the courts. The courts of registration (either a judge or a registrar, '*Rechtspfleger*') check that the preconditions for registration are met, conduct a formal verification and, if appropriate, a substantive review on the basis of the submitted application. The same applies for later changes of registered information (see 'registry update' below).

According to their obligations arising from the German Money Laundering Act (sec. 2 para. 1 number 7e, sec. 3 et seqq.), notaries public identify the founders/legal representatives and verify their identity during the mandatory notarization of the documents for formation of the company. Moreover, notaries public are especially obliged to clarify whether the founders and legal representatives identified act for themselves or on behalf of a beneficial owner. If so, public notaries identify and verify the identity of the beneficial owner. In practice, identification is verified on the day of certification using an official identity card bearing a photograph of the person and signature. In the case of a legal person or a partnership acting as founder, notaries public verify the identity of the person appearing using an excerpt of the commercial register or the founding documents. In case of doubt, notaries public are required to perform further verification and may refuse notarization.

Notaries public also verify that the documents required for the application for registration of the company are complete, in the right form and in the right manner. This also includes the proof that the required minimum share capital is paid up in the required way.

In general and beyond the foundation of companies, the German Money Laundering Act requires obliged entities, including notaries public, to clarify whether the contracting party is acting on behalf of a beneficial owner (section 3 paragraph 1 no. 3) and, if so, identify the beneficial owner (section 4 (5)). If the contracting party is not a natural person, this includes the obligation to take adequate measures to understand the ownership and control structure of the contracting party. Obligated entities are also required to record information obtained on the beneficial owner (section 8).

Moreover, credit institutions are required to maintain a data file in which the following information is stored without delay (section 24c of the Banking Act):

1. the number of any account which is subject to the obligation to verify proof of identity within the meaning of section 154 (2) sentence 1 of the Fiscal Code or of a safe custody account, as well as the dates on which the account was opened and closed,
2. the name and for natural persons the date of birth of the holder and of any party authorised to draw on the account, as well as in the cases specified in section 3 (1) number 3 of the Money Laundering Act the name and, if available, the address of any other economic beneficiary (*i.e.*, beneficial owner) within the meaning of section 1 (6) of the Money Laundering Act.

The financial supervisory authority, *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin), can access the information stored in the bank's data file insofar as this is necessary to enable it to perform its prudential functions under the Banking Act or the Money Laundering Act.

Upon request, BaFin shares the information entered in the data file with other supervisory authorities, authorities or courts responsible for providing international judicial assistance in criminal cases, and otherwise for the prosecution and punishment of criminal offence, national authority responsible for imposing restrictions on capital transfers and payment transactions pursuant to the Foreign Trade and Payments Act insofar as this is necessary to enable them to perform their functions.

6. How are legal arrangements (express trusts and trust-like agreements) formed in Germany?

German law does not provide for special provisions on trusts or trust-like arrangements; therefore the general provisions on the formation of contracts apply (section 145 et seq. of the Civil Law Code).

7. How is information on legal arrangements obtained and recorded in Germany?

See question 5 above.

II. Types of Legal Entities

There are many types of legal entities able to be formed in **Germany**. This Guide will provide information on three commonly used entities:

Private Limited Liability Company (GmbH)

Type of Legal Entity	Private Limited Liability Company	
What is the minimum number of natural persons required for formation?	1	
	Yes	No
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)	X	
Is there a residency requirement for directors?		X
Are bearer shares/share warrants permitted?		X
Is a Trust and Company Service Provider required to form?	X ¹	
Is a registered agent in the jurisdiction of formation required?		X ¹
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	X	
Does the jurisdiction allow for nominee directors?		X
If so, are they required to disclose their status as nominee directors?		
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?	X	
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	

Note:

¹ - Notaries public in Germany are professionals subject to AML obligations, in particular those set forth in the German Money Laundering Act. Pursuant to this Act, notaries public are required to perform customer due diligence. In the context of the formation of a company, notaries public are required to identify the founder and any legal representative and future director appearing for notarization. In addition to this identification obligation, notaries public are further required to verify that these persons are acting for themselves. Otherwise, notaries public are also required to identify those on whose behalf the founders, legal representatives and future directors are acting.

In addition to the identification requirements, notaries public are obliged to verify the identity using an official identity document bearing a photograph, and the signature of the natural persons. In case of doubt, notaries public may perform further verification or even refuse to notarize the documents necessary for the formation of a company.

Public (limited) company (AG)

Type of Legal Entity	Public (limited) company	
What is the minimum number of natural persons required for formation?	1	
	Yes	No
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)	X	
Is there a residency requirement for directors?		X
Are bearer shares/share warrants permitted?	X ¹	
Is a Trust and Company Service Provider required to form?	X ²	
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	X	
Does the jurisdiction allow for nominee directors?		X ³
If so, are they required to disclose their status as nominee directors?		
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?		X ⁴
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	

Notes:

¹ - In Germany, both listed and non-listed public companies can issue bearer shares¹. Listed companies are required to report the holding of voting rights to the public supervisory authorities if certain thresholds are achieved, exceeded or undercut. The thresholds, based on European Law requirements, amount to 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the shares.

Bearer share warrants do not confer ownership until the shares owed are in fact warranted; in that case, the aforementioned transparency regime will apply.

² - Notaries public in Germany are professionals subject to AML obligations, in particular those set forth in the German Money Laundering Act. Pursuant to this Act, notaries public are required to perform customer due diligence. In the context of the formation of a company, notaries public are required to identify the founder and any legal representative and future board member, appearing for notarization. In addition to this identification obligation, notaries public are further required to verify that these persons are acting for themselves. Otherwise, notaries public are also required to identify those on whose behalf the founders, legal representatives and future board members are acting.

¹ At the end of 2015, Germany expects to implement amendments to the Stock Corporation Act with the aim to further enhance the transparency of public companies issuing bearer-shares. Pursuant to these amendments, bearer shares may be issued only if (1) the shares of the stock corporation are publicly listed and thereby fall into the aforementioned transparency regime or (2) if the shares have been immobilised. The issuing of non-listed bearer shares will be subject to an obligation to deposit the global certificate with a securities clearing and deposit bank. The involvement of a securities clearing and deposit bank means that there will always be a paper trail. Ownership will be traceable through the chain of custody.

In addition to the identification requirements, notaries public are obliged to verify the identity using an official identity document bearing a photograph, and the signature of the natural persons. In case of doubt, notaries public may perform further verification or even refuse to notarize the documents necessary for the formation of a company.

³ – Nominee executive board members (*i.e.*, not directors) are not allowed under German laws.

⁴ - A public company issuing registered shares is required to keep a share register (*Aktienregister*) within the company. Holders of registered shares are by law required to provide the company with all information necessary to keep the share register up to date. The registration of a person authorised to exercise voting rights on behalf of the true holder of the shares can be limited by provisions of the articles of association. A person registered in the share register as the holder of registered shares shall notify the issuer upon request to which extent the shares belong to him or on whose behalf he holds the shares. If such a disclosure request has not been fulfilled in time, the voting rights for the shares are precluded.

General Partnership (OHG)

Type of Legal Entity	General Partnership	
What is the minimum number of natural persons required for formation?	2	
	Yes	No
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)	X	
Is there a residency requirement for directors?		X
Are bearer shares/share warrants permitted?		X
Is a Trust and Company Service Provider required to form?	X ¹	
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	X	
Does the jurisdiction allow for nominee directors?		X
If so, are they required to disclose their status as nominee directors?		
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?	X	
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	

Note:

¹ - Notaries public in Germany are professionals subject to AML obligations, in particular those set forth in the German Money Laundering Act. Pursuant to this Act, notaries public are required to perform customer due diligence. In the context of the formation of a General Partnership, notaries public are required to identify the legal representatives upon application for registration in the Commercial Registry. In addition to this identification obligation, notaries public are further required to verify that these persons are acting for themselves. Otherwise, notaries public are also required to identify those on whose behalf the legal representatives are acting.

In addition to the identification requirements, notaries public are obliged to verify the identity using an official identity document bearing a photograph, and the signature of the natural persons. In case of doubt, notaries public may perform further verification or even refuse to certify the documents necessary for the application for registration.

III. How to Access Information

This guide will address the ability to access information on entities formed in **Germany** available in **1) registries** and **2) other channels**.

Registries

There are four registries in Germany. The *Handelsregister* or commercial registry, the *Genossenschaftsregister* (the registry for cooperatives), the *Partnerschaftsregister* (the registry for partnerships) and the *Vereinsregister* (register for associations).

Contact information for the registry is provided here:

Name: Carsten Schmidt
Agency: Ministry of Justice North Rhine-Westphalia
Address: Martin-Luther-Platz 40,
40212 Düsseldorf, Germany
Phone: +49 (211) 8792-218
Email: Poststelle@jm.nrw.de or carsten.schmidt@jm.nrw.de

Website: www.handelsregister.de. This is the link to the common register portal of the German federal states. The search function allows for searches in all four registries mentioned above.

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Current Status (active, etc.)
6. Principal Address of Business
7. Principal Purpose of Business
8. Registered Capital (dependent on legal form)
9. Officer/Director Information
10. Shareholder/Member Information (for private limited liability companies only)
11. Memorandum
12. Articles of Incorporation
13. Application/Certification of Formation
14. Annual/Biennial Reports
15. Historical Document

In general, the following information is not available online, but may be available through another form of public access (i.e. in person only or via a pre-registration requirement) or to law enforcement, through specific procedures listed in further detail below:

1. Shareholder Register: Information on the shareholders of private limited liability companies (GmbH) is recoded in the registry and available online. Information on the shareholders of public limited companies is maintained by the company itself and is therefore not available publicly, yet

it can be accessed by competent authorities and FIUs through search order or administrative assistance.

Bank Account Information and Payment Records: Competent authorities, such as tax authorities or labour inspectors, have access to bank account information and payment records while conducting investigations. Law enforcement authorities also have access to this information by questioning witnesses and/or search and seizure within the frame of a search warrant issued by a judge. With respect to bank account information, law enforcement authorities can also obtain information from the *Bundesanstalt für Finanzdienstleistungsaufsicht* (federal financial supervisory authority). Payment Records are not recorded in the commercial registry.

Registry update

Companies are required by law to notify the court of registration of any change in the information recorded in the commercial registry. Among others this applies to changes of the articles of association, the company's name, business address, etc. Information in the commercial register work both for and against the company, and can be asserted in a legal dispute. It is therefore the companies' own interest to take care that their information in the commercial register is correct and up to date.

The registry court has the following explicit enforcement and sanction powers:

- Impose a coercive fine. To enforce certain obligations to the registry court, *e.g.*, enforceable registrations or submission of documents to the commercial register, use of correct business correspondence, and/or fulfilment of certain legal obligations.
- Impose an administrative fine in case of unauthorized use of a company name.
- Striking-off and winding-up:
 - Striking-off of companies without any assets
 - Striking-off of impermissible entries
 - Striking-off of invalid companies
 - Striking-off of invalid resolutions made at shareholder meetings

The judge also has jurisdiction for determining winding-up due to lack of or defects in the by-laws.

	Online Access (free or for nominal fee, no log-in requirements)	Other Public Access (available in person only or via pre-registration requirement)	Law Enforcement Access only	For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information
Name of Legal Entity	X			
Entity Number (if any)	X			
Type of Legal Entity	X			
Date of Incorporation	X			
Current Status (active, etc.)	X			
Principal Address of Business	X			
Principal Purpose of Business	X			
Registered Capital	X			
Registered Agent Information				Not applicable
Officer/ Director Information (incl. power of representation)	X			
Shareholder/ Member Information	X			
Memorandum	X			
Articles of Incorporation	X			
Application/ Certificate of Formation	X			
Annual/ Biennial Reports	X			
Shareholder Register	X		X	Access to information on the shareholders depends on the legal form of the company. The list of shareholders of a private limited liability company (GmbH) must be submitted to the commercial register and is therefore accessible publicly via the register. The share register (<i>Aktienregister</i>) of a public limited company (AG) is maintained by the company itself and not submitted to the commercial register. In that case, public authorities (tax authorities, labour inspectors, etc.) can have access in order to conduct investigations according to specific legal provisions. LEAs do not have a direct access to the shareholder register, but when carrying out criminal investigations, prosecutors/police can gain access

				by search and seizure on the basis of a search warrant issued by a judge according to provisions of the German code of criminal procedure.
Register of Charges				Charges / pledges on shares are not recorded in the commercial register
Bank Account Information			X	Public authorities (among others tax authorities, labour inspectorates) can have access in order to conduct investigations according to specific legal provisions. LEAs do not have a direct access to bank account information, but according to provisions of the German code of criminal procedure, prosecutors/police can request the required information from the <i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> (a federal financial supervisory authority) and/or from the banks and enforce their request via questioning of witnesses or search and seizure (see above) when carrying out criminal investigations.
Payment Records			X	Public authorities (tax authorities, labour inspectors, etc.) can have access in order to conduct investigations according to specific legal provisions. LEAs do not have a direct access to the shareholder register, but when carrying out criminal investigations, prosecutors/police can gain access by search and seizure on the basis of a search warrant issued by a judge according to provisions of the German code of criminal procedure.
Historical Documents (example: past annual filings)	X			

Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in **Germany**.

Channels through which foreign authorities may obtain information

Legal entities/ Relevant Individuals (directors, shareholders, managers, associates, family members, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals		X	Interview is understood as official hearing	X		Formal interviews with suspects or witnesses are possible in the context of MLA
Records/ documents	X		If publicly available or filed in an official register. Official registers are mostly open source information.	X		All kinds of documents can be shared in the context of MLA

Legal arrangements/ relevant individuals (trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals	NA. Trusts do not exist in Germany.					
Records/documents						

Financial Institutions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel		X	Interview is understood as official hearing	X		
Accounts records/ documents	X		Only information of the 'central account register' is available	X		In principle, FIs can share their documentation but they are most likely to do so after a court order is issued

Trust and Company Service Providers

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel		X	Interview is understood as official hearing	X		
Accounts records/ documents	X		If publicly available or filed in an official register	X		All kinds of documents can be shared in the context of MLA

Other Designated Non-Financial Businesses and Professions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel		X	Interview is understood as official hearing	X		
Accounts records/ documents	X		If publicly available or filed in an official register	X		All kinds of documents can be shared in the context of MLA

IV. Other Useful Sources of Information

Resource Name	Web Link
Germany Asset Recovery Guide	http://star.worldbank.org/star/sites/star/files/asset-recovery-in-german-law-english.pdf (also available in German and Arabic at http://star.worldbank.org/star/ArabForum/asset-recovery-guides)
This guide presents practical information on how Germany can assist other countries in the recovery of assets—including assistance in asset tracing investigations, freezing, seizing, and the enforcement of foreign restraint and confiscation orders—and the specific steps that other countries can take to access this assistance and cooperation.	
Short overview on mutual legal assistance	http://www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/Germany%20Template%20Mutual%20Legal%20Assistance.pdf
This compilation of information about the German legal system regarding Mutual Legal Assistance was provided by the Council of Europe Committee of Experts on the Operation of European Conventions on Cooperation in Criminal Matters, PC-OC.	
Requesting mutual legal assistance in criminal matters from G8 countries: a step-by-step guide.	http://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_%20CN152011_CRP.6_eV1182196.pdf
This guide presents the mutual legal assistance regime in force in each of the G8 countries and describes the specific procedure to be followed while requesting mutual legal assistance to G8 countries.	